

EXPANDED AGENDA
Board of Adjustment, District 2
October 7, 2015; 6 P.M.
Board of Supervisors' Conference Room
1415 Melody Lane, Building G
Bisbee, Arizona 85603

6:00 P.M. **Call to Order**

Roll Call (Introduce Board members, and explain quorum)

(Also explain procedure for public hearing, i.e., after Planning Director's Report, Applicant will be allowed 10 minutes; other persons will each have 5 minutes to speak and Applicant can have 5 minutes for rebuttal at end, if appropriate.)

Determination of Quorum

Approval of Previous Minutes

NEW BUSINESS

Item 1 - Introduce Docket and advise public who the Applicants are.

Docket BA2-15-03 (Scheller): The Applicant is requesting a Variance from Section 704.03 of the Cochise County Zoning Regulations requiring all structures in an R-36 Zoning District to be set back a minimum of 20 feet from any property line. The Applicant wishes to legitimize an existing hay barn approximately 2 feet from the south property line. The subject parcel, 108-31-067M, is located at 2529 E. Colt Road in Tombstone, AZ. The Applicants are Darrell and Diane Scheller.

- Call for PLANNING DIRECTOR'S PRESENTATION
- Declare PUBLIC HEARING OPEN
 1. Call for APPLICANT'S STATEMENT
 2. Call for COMMENT FROM OTHER PERSONS (either in favor or against)
 3. Call for APPLICANT'S REBUTTAL (if appropriate)
- Declare PUBLIC HEARING CLOSED
- Call for BOARD DISCUSSION (may ask questions of Applicant)
- Call for PLANNING DIRECTOR'S SUMMARY AND RECOMMENDATION
- Call for MOTION
- Call for DISCUSSION OF MOTION
- Call for QUESTIONS
- ANNOUNCE ACTION TAKEN (with Findings of Fact)

Item 3 - Call for Planning Director's Report

Item 4 - Call to the Public

ADJOURN



COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

TO: Board of Adjustment, District 2
FROM: Peter Gardner, Planner I
For: Mary Gomez, Interim Planning Director
SUBJECT: Minutes of the Regular Meeting of August 5, 2015
DATE: September 25, 2014

Members Present:

Albert Young, Chair
Andy Salaiz, Member

Others Present:

Mark Kersey, Applicant
Alicia Malone, Appellant
Patrick Malone, Appellant

Staff Present:

Peter Gardner, Planner I
Britt Hanson, Civil Chief Deputy Attorney
Jesse Drake, Planner II
Jim Henry, Planning Intern
Mary Gomez, Interim Planning Director

These minutes for the BA2 meeting held on August 5, 2015, are complete only when accompanied by the memoranda for said meeting dated August 5, 2015.

Call to Order / Roll Call:

Chair Albert Young called the meeting to order at 6:00 p.m. at the Board of Supervisors' Executive Meeting Room at the County Complex in Bisbee. He noted that two Board members, himself and Mr. Salaiz, were present, establishing that the Board had a quorum and could proceed. Mr. Salaiz made a motion to approve the minutes of the June 4, 2014 regular meeting. Mr. Young seconded the motion, and the vote was 2-0 to approve the minutes of the June 4, 2014 meeting.

Chair Young explained the procedures of the meeting to those present.

NEW BUSINESS

Docket BA2-15-02 (Family Dollar Elfrida): The Applicant is requesting a Variance from Section 1907.2 of the Cochise County Zoning Regulations requiring all Signs in a GB Zoning District to be no larger than 80 square feet along an arterial road and no larger than 64 square feet along a collector road. The Applicant wishes to install signs of approximately 86 square feet along an arterial road and a collector road.

Chair Young called for the Planning Director's presentation on the Docket.

Peter Gardner, Planner I, delivered the report on behalf of the Planning Director, illustrating the facts of the case, as well as the staff recommendation, utilizing photos, maps and other visual aids. He explained the background of the case and the circumstances surrounding the Variances requested under consideration.

Mr. Young noted that the Applicant was present, and invited him to make a statement. Mr. Kersey explained the background and nature of his request. He also explained the requested Variance and the rationale behind it, noting that the requested signs were out of character for the Elfrida area.

There being no other speakers present, Mr. Young noted that there was no need for a public hearing, and asked for Staff's recommendation. Mr. Gardner offered factors in favor and against approval and indicated that Staff recommended Denial of the Variance requests. Mr. Salaiz made a motion to approve the Variances as recommended by Staff. Mr. Young seconded and the motion failed 0-2.

Docket BA2-15-01 (Malone): The Appellants wish to install a self contained ham radio facility, without a dwelling on the subject parcel which is zoned SR-12. The Appellants are appealing the County Zoning Inspector's determination that the facility is not a Utility Installation, and is therefore not a Principal Use. The subject parcel, 406-22-004, is located on N. Santa Paula Drive, in Douglas, AZ. The Appellants are Patrick and Alicia Malone.

Chair Young called for the Planning Director's presentation on the Docket.

Peter Gardner, Planner I, delivered the report on behalf of the Planning Director, illustrating the facts of the case, as well as the staff recommendation, utilizing photos, maps and other visual aids. He explained the background of the case and the circumstances surrounding the Appeal requested under consideration.

Mr. Young noted that the Applicants were present, and invited them to make a statement. Mr. Malone and Mrs. Malone spoke, and explained the background and nature of their request. They also explained the requested Appeal and the rationale behind it,. The Malones expressed concern about the adjacent house being vacant and unsafe. They explained what the radio system would be used for, and the regulations it fell under.

Mr. Gardner explained the Staff's decision was that the Appellants' interpretation of the County Zoning Regulations was in violation of State and Federal definitions, and therefore the County had to defer to the State and Federal definitions. He further explained that the Staff interpretation was based on the intent of the zoning regulations to be restrictive rather than permissive to prevent loopholes caused by grammatical errors or technical changes.

There being no other speakers present, Mr. Young noted that there was no need for a public hearing, and asked for Staff's recommendation. Mr. Gardner offered factors in favor and against approval and indicated that Staff recommended Denial of the Appeal request. Mr. Salaiz made a motion to approve the Appeal as recommended by Staff. Mr. Young seconded and the motion failed 0-2.

Planning Director's Report:

Mr. Gardner noted that there were no dockets on the agenda for September. Mr. Young made a motion to adjourn. Mr. Greene seconded, and the meeting was adjourned at 7:02 p.m.



Cochise County Community Development

Highway and Floodplain Division

Public Programs...Personal Service
www.cochise.az.gov

MEMORANDUM

TO: Cochise County Board of Adjustment, District 2
FROM: Peter Gardner, Planner I *(PAG)*
FOR: Mary Gomez, Interim Planning Director
SUBJECT: Docket BA2-15-03 (Scheller)
DATE: September 24, 2015 for the October 7, 2015 Meeting

VARIANCE REQUEST

The Applicant is requesting a Variance from Section 704.03 of the Cochise County Zoning Regulations requiring all structures in an R-36 Zoning District to be set back a minimum of 20 feet from any property line. The Applicant wishes to legitimize an existing hay barn located approximately two feet from the south property line.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

<u>Parcel Size:</u>	1.36 acres (59,413 square-feet)
<u>Zoning:</u>	R-36 (Residential; one dwelling per 36,000 square-feet)
<u>Growth Area:</u>	C – Rural Community Area
<u>Comp Plan Designation:</u>	Neighborhood Conservation
<u>Area Plan:</u>	None
<u>Existing Uses:</u>	Single Family Residence & Accessory Structures
<u>Proposed Uses:</u>	Same

SURROUNDING ZONING AND USES

Relation to Subject Parcel	Zoning District	Use of Property
North	County Maintained Road/R-36	E. Colt Road/Single Family residences
South	R-36	Single Family Residences
East	R-36	Single Family residences
West	R-36	Single Family Residences

Highway and Floodplain
1415 Melody Lane, Building F
Bisbee, Arizona 85603
520-432-9300
520-432-9337 fax
1-800-752-3745
highway@cochise.az.gov
floodplain@cochise.az.gov

Planning, Zoning and Building Safety
1415 Melody Lane, Building E
Bisbee, Arizona 85603
520-432-9300
520-432-9278 fax
1-877-777-7958
planningandzoning@cochise.az.gov

II. PARCEL HISTORY

- 1980 – Manufactured home installed
- 2006/2007 – Accessory structures built without permit.
- 2008 – Current owners purchased the property.
- 2010 – Subject accessory structure built without permit.
- 2011 – Complaint for corral less than fifty feet from property line. Violation dismissed as prior owner once horses were relocated. County Policy does not hold property owners responsible for what previous owners have done unless there is a clear threat to life, health, or safety.
- 2014 – Complaint received regarding horses in corral on property line and excessive manure. Violation closed after horses relocated to a different corral.
- 2015 – Complaint received regarding corral and shed on property line. Violation closed with finding of No Violation.
- 2015 – Complaint received regarding location of the shed. This Variance is to correct the Violation.

III. PROJECT DESCRIPTION

This is a request for a Variance to allow an existing pole barn used for hay storage to remain at its current location, approximately two feet from the Applicant's south property line. The contested structures were in place when the neighbor to the south purchased their property, and no complaints were received from that neighbor until approximately two years after occupying the property.

IV. ANALYSIS OF IMPACTS

The subject structure was built in 2010 without permits, and was formerly used to house horses. After a complaint in 2014 from the neighbor to the south, the Applicant relocated the horses to another barn and corral which comply with the Zoning Ordinance requirement for a fifty foot setback for places where livestock congregate. All structures were in place, and the horse corral and barn were on the property line at least two years prior to the southern neighbor purchasing the property, and no complaints were filed for over eighteen months after the southern neighbor began occupying their property, which also has a similar barn and corral near the property line, and both barns, as well as the Applicant's second barn, are located between the two homes. The subject barn is approximately two hundred and sixty feet from the adjoining neighbor's home. For comparison, the neighbor's barn is approximately two hundred and ten feet from the Applicants' home. The adjoining neighbor has asked that the subject barn be relocated, however, based on the nature of construction the barn is not readily movable, nor is there another location on the Applicants' property where the structure would fit.



Aerial Map, showing the subject and adjoining parcels.

V. PUBLIC COMMENT

Staff mailed notices to neighboring property owners within 300 feet of the subject parcel, posted a legal notice on the property on September 14, 2015, and published a legal notice in the Bisbee Observer on September 17, 2015. To date, the Department has received two letters of opposition from neighboring property owners, including the neighbor directly to the south who filed the complaints. Concerns for maintenance of the shed, materials used in construction, liability, and number of structures and animals on the property were raised.



View of the shed, the subject of the variance request, on the left, the property line fence and the adjoining neighbor's barn and corral.

VI. SUMMARY AND CONCLUSION

While the structures in question were built without building permits, they were a pre-existing condition when the objecting neighbor purchased their property. In addition, there were no objections filed with Staff for approximately two years after the neighbor occupied their parcel. The Applicants have removed the livestock to another barn which complies with the livestock provisions of the Zoning Ordinance. The structures in question, while less than the required setback from the property line, are farther from the objecting neighbor's home than that neighbor's barn is from the Applicants' home. There is not another location on the Applicants' property that is suitable for the barn. Staff finds that the request to leave the barn in place for storage purposes is a reasonable request, and forcing the barn to be relocated or completely removed would present an unreasonable hardship on the Applicant.

Factors in Favor of Allowing the Variance

1. The present conditions were pre-existing when the objecting neighbor purchased the adjoining parcel.
2. Almost two years passed before the complainant's first contact with Staff regarding the shed;
3. The Applicants have complied to comply with other regulations by removing the livestock from the shed and attached corral;
4. Removing and rebuilding the shed on the property is not feasible, as there is not another location where the shed will fit;
5. The nearest structures on adjoining parcels are used for livestock or storage rather than residences; limiting the impact to the southern neighbor

Factors Against Allowing the Variance

1. The structure was built without a permit in 2010; and
2. Two neighbors object to the request.



View of the subject shed and chicken coop.

VII. RECOMMENDATION

Staff recommends **Approval** of the Variance request.

Sample Motion: *Mr. Chairman, I move to approve Docket BA2-15-03, granting the Variance as requested by the Applicant, the Factors in Favor of approval constituting the Findings of Fact.*

VIII. ATTACHMENTS

- A. Variance Application
- B. Applicant Photos
- C. Location Map
- D. Public Comment
- E. Neighbor Photos



COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

APPLICATION FOR VARIANCE

DESIRING A VARIANCE FROM THE TERMS OF THE COCHISE COUNTY ZONING REGULATIONS:

TO THE HONORABLE BOARD OF ADJUSTMENT, DISTRICT 2

I (we), the undersigned, hereby petition the Cochise County Board of Adjustment, District 2

to grant a variance from the terms of the Cochise County Zoning Regulations as follows:

(Note: Complete all the following items. If necessary, attach additional sheets.)

1. Parcel Number: 10831067M
2. Address of parcel: 2529 E COIT RD Tombstone AZ 8563
3. Area of Parcel (to nearest tenth of an acre): 1.36
4. Zoning District designation of Parcel: R-36
5. Describe existing uses of the parcel and the size and location of existing structures and buildings on it.
pole Barn to keep Hay in 2 ft from
Property line 19 x 17

6. Describe all proposed uses or structures, which are to be placed on the property.

Permit the existing Building

7. State the specific nature of the variance or variances sought.

Distance

6 A

8. A variance may be granted only when, due to any peculiar situation surrounding a condition of a specific piece of property, including unusual geographic or topographic conditions, strict application of the Zoning Regulations would result in an unnecessary hardship to the property owner. In granting variances, however, the general intent & purpose of the Zoning Regulations will be preserved (See attached Section 2103.02 on variances). Describe the reasons for requesting the variance and attach any documents necessary to demonstrate compliance with the provisions cited above.

we wouldn't have anywhere else
to put it

9. State why the variance would not cause injury to or impair the rights of surrounding property owners. Identify conditions you propose, if any, to minimize the impact on surrounding properties. It shall be the responsibility of the Applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.

The Barn was put up in 2009
before MR Naves moved in & for
3 years he was friends & this was
not a problem

10. List the name and address of all owners of the Parcel(s) for which the variance is sought.

PROPERTY OWNER

MAIL ADDRESS

Darrell Scheller P.O. Box 24 Tombstone
Dane Scheller P.O. Box 24 Tombstone AZ 85638

The undersigned hereby certifies and declares that to the best of his/her knowledge and belief the data submitted on and attached to this application for a variance from the terms of the Cochise County Zoning Regulations are true and correct.

SIGNATURE OF PETITIONER

ADDRESS

DATE

Darrell Scheller 8-24-15
Darrell Scheller

APPLICANT'S PHONE NUMBER 520-255-1287 - 520-255-

APPLICANT'S EMAIL ADDRESS Dicne.Scheller@Yahoo.com ¹²⁸⁵

Note: Each application shall be accompanied by an accurate site plan showing the parcel of land and the existing and proposed structures and buildings on it, and shall be accompanied by a check in the amount of three hundred dollars (\$300) payable to the Cochise County Treasurer. Return to the Cochise County Planning Department, 1415 Melody Lane, Building E, Bisbee, Arizona, 85603.

2103.02 Variances

The Board of Adjustment may grant a variance from the terms of these Zoning Regulations when, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting such variance the general intent and purposes of the Zoning Regulations will be preserved. It shall be the responsibility of the applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.

These zoning regulations are generally intended to yield results that are in compliance with all other applicable laws. A request for a "reasonable accommodation" in these regulations, pursuant to any federal or state housing law or other similar legislation, as may be necessary to afford an equal opportunity to housing under any such law, shall be considered to be an appropriate condition for a variance from the strict application of these zoning regulations. The Board of Adjustment is authorized to grant any such variance, to the extent that any such accommodation is required pursuant to any applicable state or federal law.

Any decision of the Board of Adjustment allowing a variance shall be considered for revocation by the Board of Adjustment if substantial construction, in accordance with the plans for which such variance was granted, has not been initiated within 12 months of the date of approval, building permit issuance, or if judicial proceeding to review the Board of Adjustment's decision has been instituted, 12 months from the date of entry of the final order in such proceedings, including appeals. Additionally, if any of the conditions of the variance approval are not complied with within 12 months or within the time period set by the Board, it shall be revoked after 30 days notice to the owner and applicant, unless a request for a review hearing before the Board of Adjustment is made by the applicant within this 30 day appeal period. The Board of Adjustment may grant reasonable extensions to the time limits upon a hearing pursuant to a timely written request by the applicant.

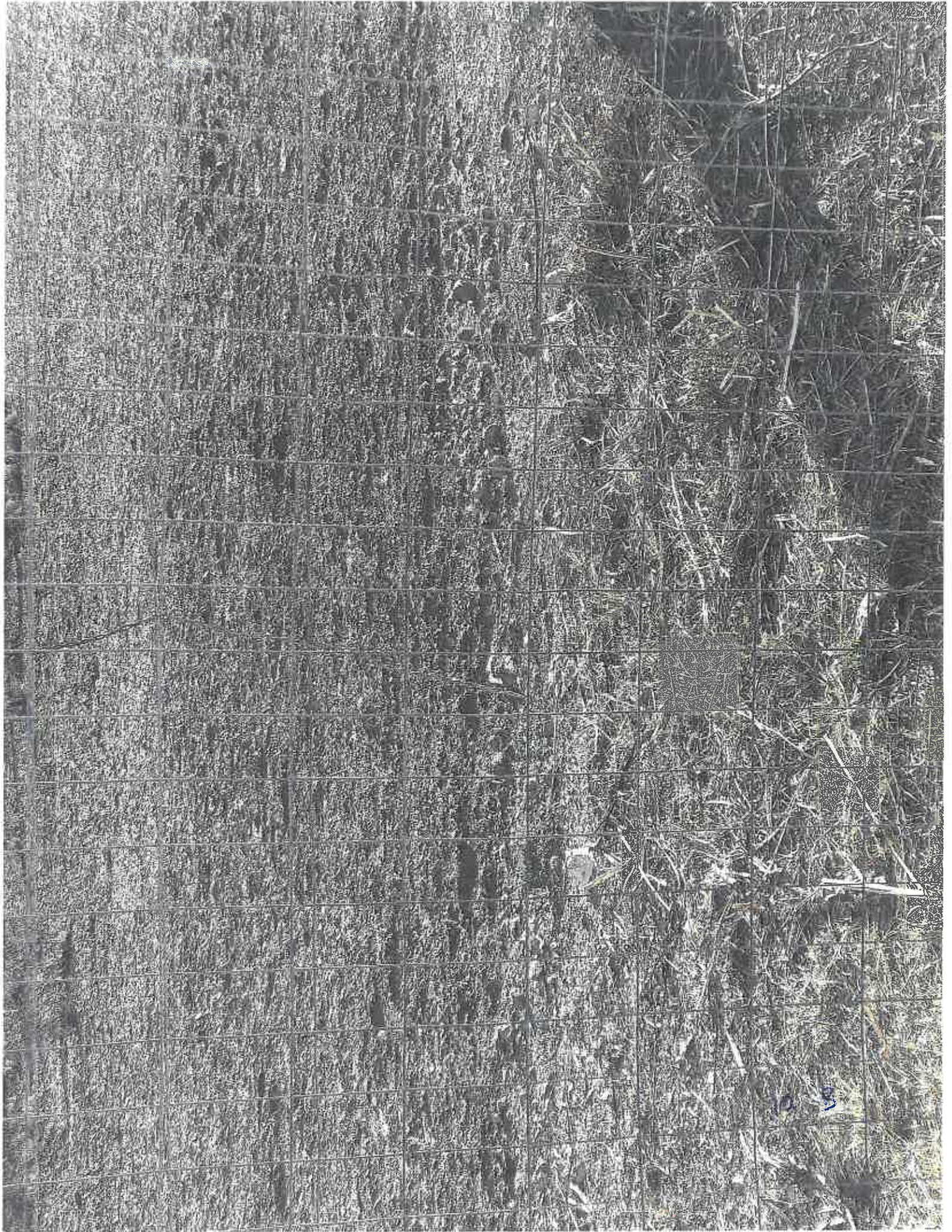
History

In October of 2011, We had a letter from the county saying we was in violation of having a horse corral & barn on the property line, Mr. pat Hoefer came out & informed us that it was Mr. Anderson the man that sold us the property & owned the land next door. Mr. Hoefer told us that we couldn't keep the horse there & so we built a new pen 50ft off property line, He told us we didn't have to move barn or corral as barn didn't have water or electric & that the chicken coop was exempt. We have a letter dated 27th oct 2011 saying case closed. In about march 2012 Mr. Jim Neises & his wife Ellen brought the property next door & put up the corral fence wright next to ours to keep his horses in, we told him what had happened to us & he said he wasn't bother & to keep the horse our corral what I should have done was get in touch with the county , but being a good neighbor we didn't .Mr. Neises seemed nice & Darrell helped him with his horses , But it got that we couldn't go out in our yard without Mr. Neises waiting for us & if he didn't see us for a couple of days he would be on the door. So we back off we did not full out. Then over the fence Mr. Neises told Darrell that he had bladder cancer, we felt very sorry for both of them & had them for thanks giving & went out for a couple of meals, But then it all started again even to him trying to get invites to our friends home so again we backed off Then we in December 2014 we get a letter from the county again Mr. Chuck Cooper came out to say Mr. Neises had complained about horse manure & corral being on property line. Mr. cooper talked to Mr. neises over the fence & chuck pointed out to him that he was standing in a lot of manure on his side of fence & that he was in violation with his fence & barn not being 50ft from property line Mr. Neises said that we hadn't spoken to him since June & that he was going to build a new barn & could clean his manure up. We then put the horses back in the legal pen & told Chuck we would build new pens this was the Friday Chuck came back on the Monday & the pens was done Again we have a letter saying case closed then in February we get another letter this time Mr. Neises wants the barn & chicken coop taken down , this time we had had enough & asked Chuck to get Chris Saylor on the phone which was on speaker phone Chuck explained to Chris what was going on & that we would like him to come out & see for himself he said he was too busy & that

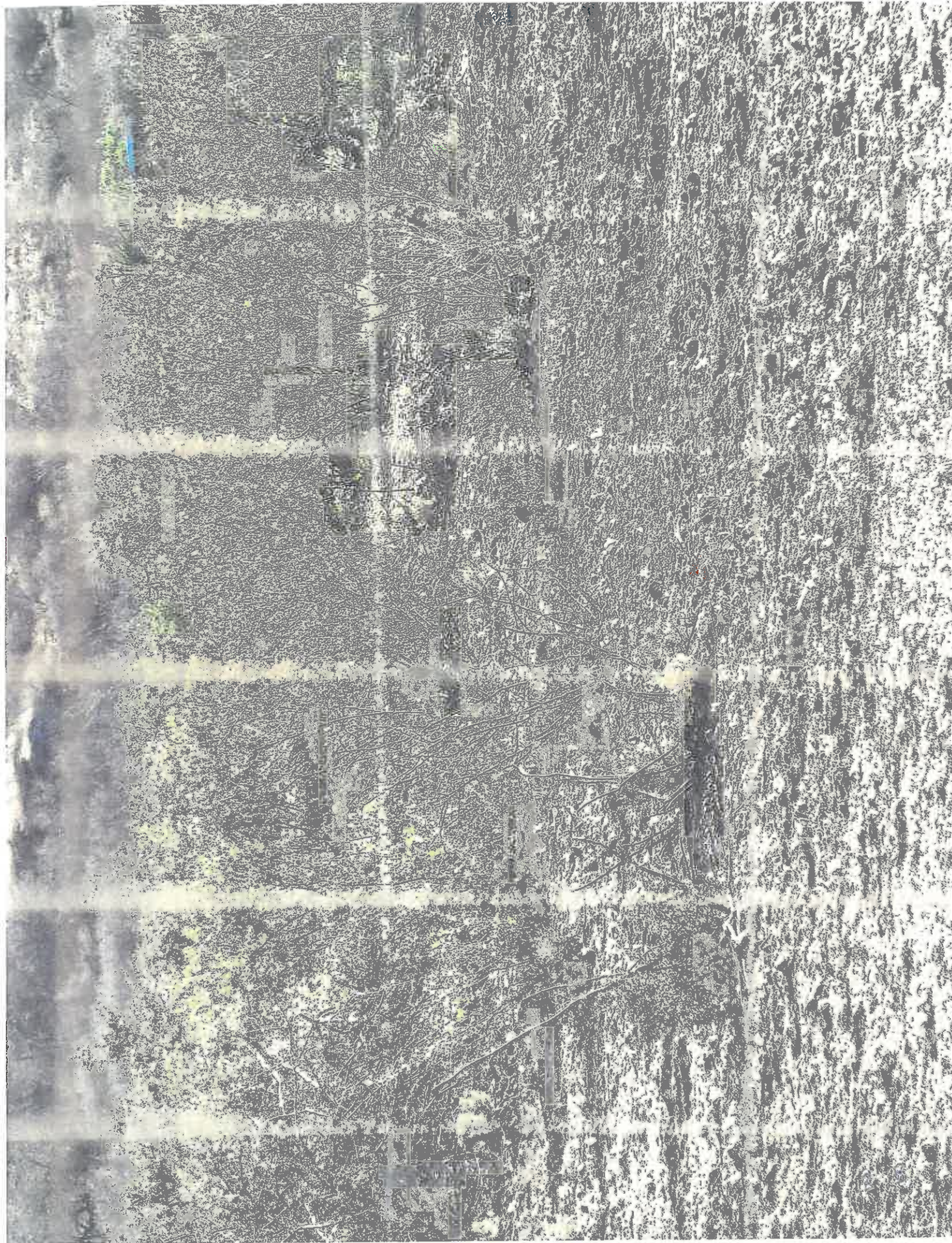
was what he had sent Chuck for, He asked how big the barn was & we told him 19x17 he asked if it had water & electric & we told him no & he said that it was find & that the chicken coop was exempt, & that if they got any more letter from Mr. Neises they would ignore them again I got another letter saying case closed , then ,A few weeks later we get another letter this time my wife Diane phoned Chris & told him that nothing had changed & that Chuck can come & look any time even with us not being there. Chris told me not to worry he would ignore any more letters. Then on 7-29-2015 we get another letter so we phoned Chuck who told us that Chris was coming out with Sonia & himself. When they came out they say the barn is to big & would have to come down , then Chris asked how long we have lived there my wife told them since 2008, to which Sonia said something about 5 years & that as it was there before we moved in then it didn't have to come down to which I didn't correct her as we have had enough Chris also said he had come out to cover his back as he didn't think this guy was going to let up as he was getting a letter a week, by the way I have my son that was visiting from u k as a witness , we also asked that the meeting be put on paper then we receive a letter saying that I have told them that the barn was there when we moved in , then we get another letter saying that they need to come out , so we phoned Chuck & he said that the barn has to come down but at no time did he hear me say that the barn was here when we moved in, I also asked him how many letter had they had received from Mr. Neise he said only 4. It was then that I told him that I would not take the barn down when I only use it for hay & I have for letters saying that it doesn't have to be taken down

Yours sincerely Darrell Scheller





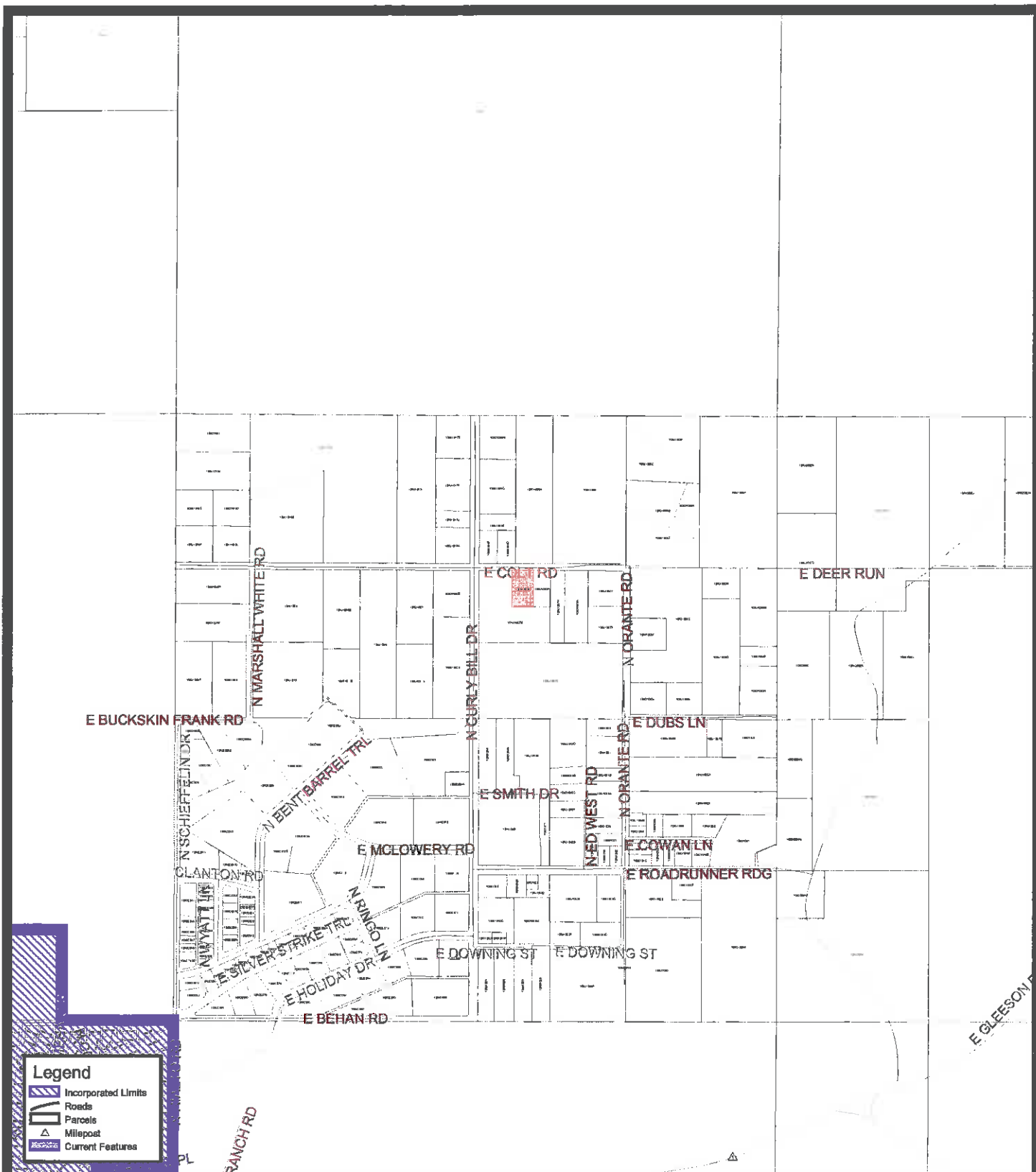
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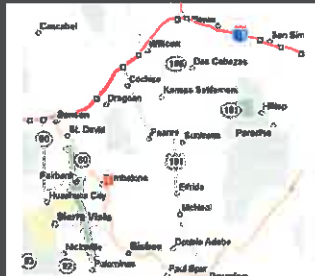






Legend

- Incorporated Limits
- Roads
- Parcels
- Milepost
- Current Features



BA2-15-03 (Scheller)

This map is a product of the Cochise County GIS Information Technology Dept.



Variance Docket BA2-15-03 (Scheller)

____ YES, I SUPPORT THIS REQUEST

Please state your reasons:

☒ NO, I DO NOT SUPPORT THIS REQUEST:

Please state your reasons:

It is unfair to other residents. The Schellers have been here only 5 or 6 years and has several sheds and buildings without permits. There were no sheds or buildings on that property when they purchased it. The property is not cleaned regularly of animal waste and creates a fly problem. To much junk & animals for the size of the property.

(Attach additional sheets, if necessary)

PRINT NAME(S): GENE MOORE NANCY MOORE

SIGNATURE(S): Gene Moore

Nancy Moore

YOUR TAX PARCEL NUMBER: 10831065 D

(the eight-digit identification number found on the tax statement from the Assessor's Office)

Your comments will be made available to the Board of Adjustments. Submission of this form or any other correspondence becomes part of the public record and is available for review by the applicant or other members of the public. Written comments must be received no later than 4 PM on Thursday, September 24, 2015 to be included in the staff report to the Commission in order for them to consider the comments before the meeting. We cannot make exceptions to this deadline; however, if you miss the written comment deadline you may still send email comments, or phone Peter Gardner at the contact information listed on page one by October 6, 2015 to have your support or non-support verbally noted at the meeting; or you may personally make a statement at the **public hearing on October 7, 2015**. NOTE: Please do not ask the Board to accept written comments or petitions at the meeting; your cooperation is greatly appreciated.

RETURN TO: Peter Gardner, Planner I
Cochise County Planning Department
1415 Melody Lane, Building E
Bisbee, AZ 85603

Variance Docket BA2-15-03 (Scheller)

☐ YES, I SUPPORT THIS REQUEST

Please state your reasons:


☒ NO, I DO NOT SUPPORT THIS REQUEST:

Please state your reasons:

The building at issue was a loafing shed w/ corral. Now he's calling it a hay barn. Pictures show he's got no room to maintain shed or weeds. He built shed & painted it from materials from the dump. What is paint he's lead in it? If tin is blown off or has sharp points, if horses chew on or kick shed who will be responsible, I don't want to be liable for it. who will be?

(Attach additional sheets, if necessary)

PRINT NAME(S): Jim Neises Eileen Neises

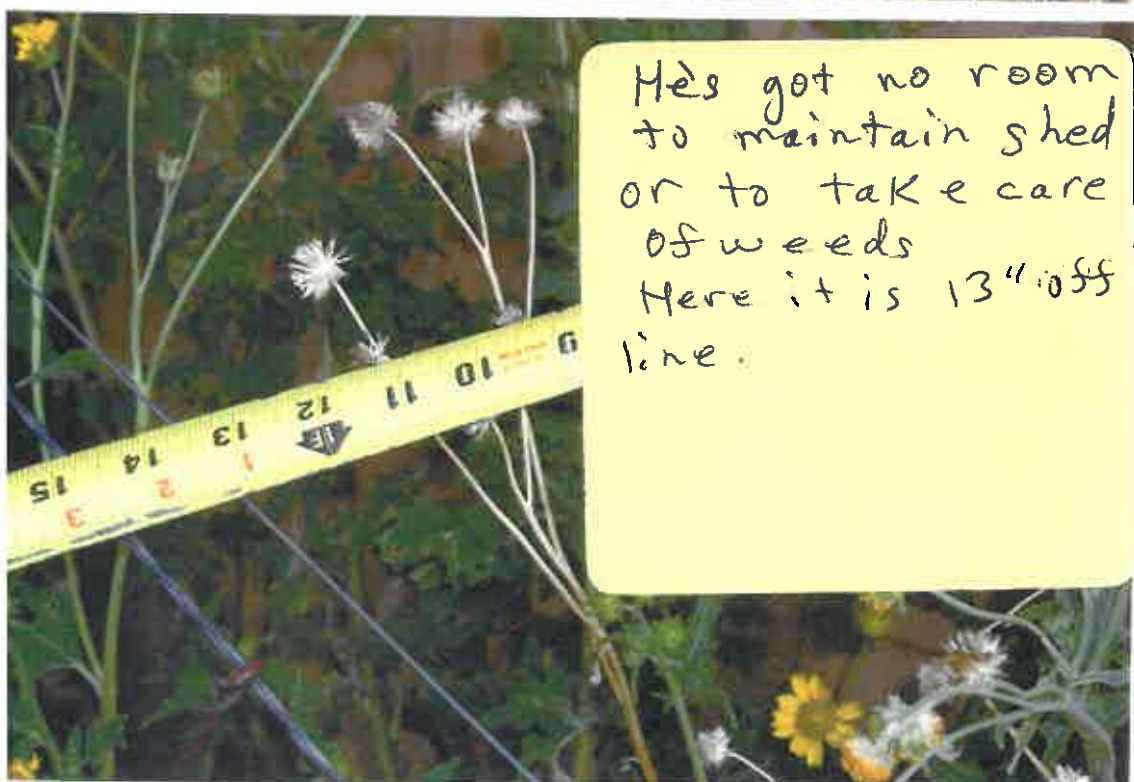
SIGNATURE(S): 
Eileen Neises

YOUR TAX PARCEL NUMBER: 10831067N (the eight-digit identification number found on the tax statement from the Assessor's Office)

Your comments will be made available to the Board of Adjustments. Submission of this form or any other correspondence becomes part of the public record and is available for review by the applicant or other members of the public. Written comments must be received no later than 4 PM on Thursday, September 24, 2015 to be included in the staff report to the Commission in order for them to consider the comments before the meeting. We cannot make exceptions to this deadline; however, if you miss the written comment deadline you may still send email comments, or phone Peter Gardner at the contact information listed on page one by October 6, 2015 to have your support or non-support verbally noted at the meeting; or you may personally make a statement at the **public hearing on October 7, 2015**. NOTE: Please do not ask the Board to accept written comments or petitions at the meeting; your cooperation is greatly appreciated.

RETURN TO: Peter Gardner, Planner I
Cochise County Planning Department
1415 Melody Lane, Building E
Bisbee, AZ 85603





He's got no room
to maintain shed
or to take care
of weeds
Here it is 13" off
line.



↑
Our horses were
chewing on the shed
we put temporary
fence up to
keep them off
for now.



